

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 637 of 1997

in

SPECIAL CIVIL APPLICATION NO 10005 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1-2 yes

3-5 no

BARODA MUNICIPAL CORPORATION

Versus

VASNTIKA R DALIA

Appearance:

MR PRANAV G DESAI for Appellant

MR IS SUPEHIA for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.H.KADRI

Date of decision: 16/09/98

ORAL JUDGMENT : (Per: K.G. Balakrishnan, C.J.)

This is an appeal preferred by the Baroda Municipal Corporation challenging the judgment and order dated May 5, 1997, passed by the learned single Judge, in Special Civil Application No.1005 of 1997.

The respondent was a stenographer of the appellant-corporation. Her services were terminated on February 10, 1977. The order of termination was challenged and the Labour Court, Vadodara, by award dated March 20, 1988, directed reinstatement of the respondent in service. The operative portion of the award is as under:

"It is ordered that the first party should reinstate the second party to her original post of Stenographer within one month from the date of publication of this order. The second party is not awarded any salary in respect of back wages. No order as to costs of this reference looking to the circumstances of the case."

As the back wages were denied by the Labour Court, Vadodara, the respondent had filed Special Civil Application No.5497 of 1988 and the appellant-corporation had also filed Special Civil Application challenging the award of the Labour Court. Both the Special Civil Applications were dismissed. The respondent was, thereupon, reinstated in service on March 23, 1988 and she retired on January 31, 1997. In 1996, prior to her retirement, the respondent came to know that she was not given the benefit of continuity of service and she filed the present Special Civil Application praying that her reinstatement in service should be with continuity of service. The appellant-corporation resisted that Special Civil Application and contended that the Labour Court did not grant such a relief to the respondent and, therefore, she was not entitled to get the benefit of continuity of service. It was also contended that the judgment in Special Civil Application No.5497 of 1988 would operate as res-judicata in claiming the benefit of continuity of service by the respondent. But these objections were rejected by the learned single Judge, and the Special Civil Application was allowed, granting continuity of service to the respondent. That order is challenged before us.

We heard learned advocate Mr.Pranav G. Desai for the appellant and learned advocate Mr. S.I. Supehia for the respondent.

The learned counsel for the appellant contended that, in the award passed by the Labour Court, there was no specific direction to the effect that, while

reinstating the respondent in service, she should be given continuity of service and, in absence of any such specific direction in the award, it should be deemed that the same was rejected. It was also contended by the learned counsel for the appellant that, in Special Civil Application No.5497 of 1988, the respondent had specifically prayed that she should be reinstated in service with continuity of service, and dismissal of that Special Civil Application is an implied res-judicata for claiming that benefit now. The learned counsel for the respondent, on the other hand, contended that the original order of termination of service was found to be void ab-initio by the Labour Court and the same was confirmed in the subsequent proceedings and, therefore, the termination itself was invalid and inoperative and, therefore, it is deemed that there must have been continuity of service.

It may be noted that, in the award passed by the Labour Court, it is not stated that there will be continuity of service. However, the award says that the respondent must be reinstated to the original post. Back wages were denied for the reason that the respondent was serving elsewhere during that period and was gainfully employed. Even if it is assumed that there was no specific order for continuity of service, there are no records to show that, while reinstating the respondent in service, the appellant had passed a specific order denying the benefit of continuity of service. It is true that it would have been open to the appellant to pass an order denying that right, and, if that was done, the respondent would also have got an opportunity to challenge the same. As regards the judgment in Special Civil Application No.5497 of 1988, the same was disposed of by an order, "Dismissed. Notice discharged". None of the contentions raised by the respondent was specifically considered by the court. As the judgment itself was not on merits, it cannot be said that the same would operate as an implied res-judicata against the respondent.

The Division Bench of this Court, in the case of M.P. Ramanandi vs. Gujarat State Warehousing Corporation, reported in 1985 (2) GLR 1040, observed as under:

"Thus, from the abovesaid judgment, it is clear that if the pre-condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated, must be deemed to be in continuous service."

The Division Bench also relied upon the decision of the

Supreme Court in the case of Mohan Lal vs. The Management of M/s. Bharat Electronics Ltd., reported in AIR 1981 Supreme Court 1253, wherein, in paragraph 16, the following observations were made:

"As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service."

In the instant case, the respondent was reinstated in 1988 and continued till 1997. There was no specific order denying continuity of service. Termination of her services was found to be illegal and she was ordered to be reinstated to her original post. Under the above circumstances, the learned single Judge was justified in holding that the respondent was entitled to continuity of service. We do not find any reason to interfere with the judgment of the learned single Judge.

In the result, this appeal fails and is dismissed. The interim relief is vacated. The appellant is directed to calculate the pension of the respondent and pass appropriate orders within three months from the date of receipt of this order. There shall be no order as to costs.

(swamy)